IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2002

CORAM:

THE HONOURABLE MR. JUSTICE S.JAGADEESAN
AND
THE HONOURABLE MR. JUSTICE P.D.DINAKARAN

L.P.A.No.227 of 1999

R.Karithimma Naidu .. Appellant

Vs

1. R.Venkatrama Gounder
2. Smt.Ramathal
3. Smt.Sellammal
4. Smt.Sarojini
5. S.Mohan
6. K.Ganapathy
7. R.Duraisamy @ Palanisamy
8. Mohamed Rafi .. Respondents
(Respondents 4 to 6 and 8 given up)
(first respondent died on 30.8.2000
leaving his wife Ramathal, second
respondent herein as his sole legal
representative as per Memo dated
23.1.2002)

PRAYER: Against the judgment and decree of the Honble Mr.Justice S. S.Subramani, dated 24.6.1999 in A.S.No.715 of 1987 against the judgment and decree of the learned III Additional Subordinate Judge, Coimbatore, dated 13.7.1987 in O.S.No.387 of 1984.

! For Appellant : Mr.N.Varadarajan
^ For Respondents : Mr.V.Narayanaswami for R1 and R2
No appearance for respondents 3 & 7

: JUDGMENT

P.D.DINAKARAN,J.

Heard both sides.

2.1. For the purpose of convenience the parties are arrayed as per ranks in the suit.

2.2. The above appeal is directed against the judgment and decree dated 24.6.1999 in A.S.No.715 of 1987 of the learned Single Judge reversing the judgment and decree dated 13.7.1987 in O.S.No.387 of 1984 on the file of the III Additional Subordinate Judge, Coimbatore, filed by the appellant herein for recovery of possession of the suit property, damages for a sum of Rs.15000/- from the defendants 1 and 2 for their use and occupation of the properties,and for future damages at Rs.5000/- per year from the date of filing the suit, under the following facts and circumstances of the case.

2.3. The suit property consists of two items. Item No.1 of the suit property is the portion at Door No.10/6, (New No.1/16), Pillaiyarkoil Street, Kattoor, Coimbatore and Item No.2 of the suit property is the located at Door No.91, Mall Mill Road, Coimbatore.

2.4. The case of the plaintiff is that both the suit properties originally belonged to one Rangasamy Gounder, who had two sons, namely R.Rakkianna Gounder and R.Venkatarama Gounder, of whom R.Rakkianna Gounder died before 1944 leaving his wife Rakkiammal and three sons, namely R.Rangasamy, R.Vellingiri and R.Ramasamy. The said Rangasamy Gounder died in the year 1944, thus leaving R.Venkatarama Gounder (first defendant) and Ramathal (second defendant), namely the wife of the first defendant R.Venkatara Gounder, Rakkiammal, wife of R.Rakkianna Gounder, and her three sons R.Rangasamy, R.Vellingiri and R.Ramasamy.

2.5. The plaintiff purchased Item No.1 of the suit property from R.Venkatarama Gounder, the first defendant, R.Rangasamy, R.Vellingiri, and Minor Ramasamy, represented by mother and guardian Rakkiammal, by sale deed dated 15.7.1957, marked as Ex.A1 on behalf of the plaintiff. After purchasing the property under sale deed dated 15.7.1957, marked as Ex.A1, the plaintiff leased out item No.1 of the suit property to the first defendant and others. Since the first defendant committed willful default in paying the rent, the plaintiff initiated eviction proceedings against the first defendant and others in R.C.O.P. No.84 of 1962 on the file of the learned Rent Controller-cumDistrict Munsif, Coimbatore and obtained an order of eviction dated 15.6.1962 , which was on appeal confirmed in R.C.A.No.78 of 1962 by order dated 18.10.1962, pursuant to which the plaintiff preferred E.P.No.108 of 1966 before the learned Rent Controller to evict the petitioner.

2.6. The plaintiff further contends that he had purchased the suit property in Item No.2 in Court auction in E.P.No.144 of 1964 in SC.161 of 1963 on the file of the Sub Court, Coimbatore on 3.3.1965 and also took possession of the same, as per Ex.A2.

2.7. However, at the time of executing the eviction proceedings in E.P.No.108 of 1966, the plaintiff contends that the first defendant instigated his nephew R.Ramasamy, who is nonetheless the third son of R.Rakkianna Gounder, who was a minor at the time of execution the sale deed dated 15.7.1957 and represented by his mother and guardian Rakkiammal, filed O.S.No.79 of 1966 before the Sub Court, Coimbatore on 4.3.1966 for partition

and separate possession of the property in both item Nos.1 and 2 of the suit schedule property and also obtained an order of interim injunction on 5.3.1966 restraining the execution of eviction order made in R.C.O.P.No.84 of 1962, alleging that the sale deed dated 15.7.1957 is not binding on him as he was minor on that day and the same was not in his interest.

2.8. Ultimately, a preliminary decree was passed in favour of the R.Ramasamy on 27.9.1971 allotting 1/6th share in Item Nos.1 and 2 of the suit schedule properties. However, while passing final decree proceedings on 16.9.1975 in I.A.No.66 of 1972, the Court instead of allotting 1/6th share in both item Nos.1 and 2 of the suit schedule properties, allotted a consolidated portion in Item No.1 of the suit schedule property. The plaintiff, therefore, filed E.P.R.No.72 of 1978 for possession against the first defendant and took possession of the 5/6th share of the suit properties with police aid on 12.7.1979, under Ex.A9, and the said delivery was also recorded on 25.7.1979. However, the defendants 1 and 2 successfully broke open the locks, reoccupied the suit premises and trespassed into the same.

2.9. According to the plaintiff, since he has taken delivery of possession through Court on 12.7.1979, nothing survives in E.P.108 of 196 6 filed to execute the order of eviction dated 15.6.1962 made in R.C.O.P.No.84 of 1962 and therefore, E.P.No.108 of 1966 has become infructuous.

2.10. The plaintiff also contends that since the defendants are only trespassers, the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act are not applicable.

2.11. The plaintiff, therefore, contending that before evicting defendants 3 to 8, defendants 3 to 6 were paying rent of Rs.100/- per month and defendants 7 and 8 were paying rent at Rs.500/- per month, claims that he is entitled to a minimum of Rs.5000/- a year as damages for the use and occupation of the suit properties at least for a period of three years prior to filing of the suit, and therefore claims Rs.15000/-, and further claimed a sum of Rs.5000/- as future damages till the date of possession of the suit property.

3.1. It is also contended that, in view of the continuous possession and enjoyment of the suit properties by the defendants, they are entitled for the benefit of adverse possession.

3.2. Inter alia, the defendants contended that Item No.2 of the suit property was purchased by one Doraisamy vide E.P.No.540 of 1960 in O.S.No.20 of 1973 pending on the file of the District Munsif Court, Coimbatore, pursuant to which the defendants 7 and 8 took possession and continued to be in possession of Item No.2 of the suit property.

3.3. On behalf of the plaintiff 27 documents were marked as Ex.A1 to A27 and 3 documents were marked on behalf of the defendants as Ex.B1 to B3.

4. Per contra, the defendants contend that despite the sale deed dated 15.7.1957, marked as Ex.A1, they were in continuous possession and

enjoyment of the suit properties, initially as lessees and thereafter continued to be in occupation even without paying any rent, as admitted by the plaintiff himself, from June 1962, when the plaintiff initiated the eviction proceedings in R.C.O.P.No.84 of 1962 before the learned Rent Controller-cum-District Munsif, Coimbatore, and the same was not executed till date, even though, the order of eviction dated 15.6.1962 was confirmed on appeal in R.C.A.No.78 of 1962 on 18.10.196 2, and hence contends that the said order of eviction could not be executed as the same is barred by limitation. They have no objection for the execution of the order in the RCOP, if it is lawful.

5. Appreciating the oral and documentary evidence adduced by either parties, the learned Subordinate Judge, Coimbatore, by judgment and decree dated 13.7.1987 held that the plaintiff is entitled for recovery of possession of 5/6th share of the suit property in item No.1 and 2, based on Ex.A1, a sale deed dated 15.7.1957 with regard to property in item No.1; as well as by Court auction on 3.3.1965 in E.P.No.144 of 1964 in S.C.No.161 of 1963, as per Ex.A2, read with Ex.A9, dated 12.7.1979, whereunder the plaintiff took delivery of possession of the suit properties, and consequently decreed the recovery of possession, as well as damages of Rs.15000/- and permitted the plaintiff to work out his future damages under Order 20 Rule 21 of the Code of Civil Procedure.

6. Aggrieved by the said judgment and decree dated 13.7.1987, the defendants preferred the above appeal A.S.No.715 of 1987 contending that Ex.A9 denotes only paper delivery and the plaintiff had not taken physical possession of the suit property.

7. The learned Single judge, considering the only point raised in the appeal, i.e., whether the plaintiff was put in physical possession of the property as per Ex.A9, dated 12.7.1979, held that delivery of possession under Ex.A9 was only a paper delivery, holding that Ex.A9 is only a symbolic delivery, and therefore, accepted the case of the defendants that they are entitled for the benefit of adverse possession and allowed the appeal and dismissed the suit.

8. Mr.N.Varadarajan, learned counsel for the plaintiff/appellant herein contends that, assuming Ex.A9 is only a symbolic delivery, the same is deemed to be an interference to the continuous possession and enjoyment of the suit property by the defendants and therefore, the claim of adverse possession by the defendants is liable to be negatived.

9.1. Per contra, Mr.V.Narayanaswami, the counsel for the defendants 1 and 2/respondents 1 and 2 herein contends that the paper delivery will not confer any right of physical possession of the property on the plaintiff, unless the plaintiff takes possession of the suit property in the manner known to law.

9.2. Inter alia, the learned counsel for the defendants 1 and 2/ respondents 1 and 2 herein also reiterated the contentions that were raised before the learned Single Judge, that even though the plaintiff obtained an order of eviction as early as on 15.6.1962 and the same was confirmed on

appeal by order dated 18.10.1962 in R.C.A.No.78 of 1962 , since the plaintiff as not persued E.P.No.108 of 1966, the same is now barred by limitation and consequently, the defendants are entitled to claim adverse possession against the plaintiff with regard to item No.1 of the suit property, and that in view of the purchase of item No.2 by Doraisamy under Ex.B2 dated 10.8.1976 and consequential letting out of the said property to defendants 7 and 8, the claim of adverse possession by defendants 7 and 8 under Ex.B2 is also justified.

10. We have given careful consideration to the submissions of both sides.

11. The only point that arises for our consideration is, whether the defendants/respondents are entitled to claim adverse possession over the suit property in spite of delivery of possession in a competent proceedings under Ex.A9 dated 12.9.1979, which had ultimately become final by order of this Court dated 19.7.1983 in C.R.P.No.302 of 1982.

12.1. In this regard, we are obliged to refer the order of this Court dated 19.7.1983 made in C.R.P.No.302 of 1982 , wherein this Court as upheld the delivery of possession in favour of the plaintiff rejecting the contentions of the first defendant herein.

12.2. On the issue, whether a paper delivery, assuming the same is only symbolic and therefore, not justified in law, be an interruption to the alleged plea of adverse possession, the Apex Court in MANIKAYALA RAO v. NARASIMHASWAMI reported in AIR 1966 SC 470, held as follows:
"It seems to us that the question of adverse possession is one of fact. If the person against whom adverse possession is set up, shows that he had in fact obtained possession, whether lawfully or not, that would interrupt any possession held adversely against him. The question is whether there was in fact an interruption of the adverse possession and not whether that interruption was justifiable in law. Under the order for delivery of symbolical possession, whether it was legal or otherwise, Prakasalingam did obtain possession and this was an interruption of the adverse possession by the respondents. In respect of the present suit time under Art.144 must, therefore, commence from that interruption.
It is, therefore, well settled in law that assuming Ex.A9, dated 12.7 .1979, is only a symbolic delivery, the same is deemed to be a lawful interference to the peaceful and possession and enjoyment of the person who claims adverse possession, as held by the Apex court in the decision cited supra, and as such a symbolic delivery of the possession of the property in execution proceedings under Ex.A9 would amount to an interruption of the peaceful and continuous possession and enjoyment of the person who claims adverse possession. Hence, the plea of adverse possession claimed by the defendants fails and therefore, liable to be negatived.

12.3. That apart, we find that the trial Court has held that even though one Doraisamy was said to have purchased Item No.2 of the suit property by a Court auction under Ex.B2 dated 10.8.1976 and let out the said property to defendants 7 and 8, the defendants had failed to prove, by acceptable

evidence, that the said Doraisamy had taken delivery of possession of the said property, had let out the same to defendants 7 and 8, effected mutation of the relevant revenue records in his favour, and is paying property tax for the same. But, on the other hand, the plaintiff had satisfactorily and conclusively proved that he had taken delivery of possession of Item No.2 of the suit property also under Ex.A9 dated 12.7.1979, and the said finding of the trial Court was neither dealt with nor appreciated by the learned Single Judge. We are, therefore, obliged to hold that the plaintiff is entitled for recovery of possession of Item No.2 of the suit property and for damages, as prayed for.

12.4. Hence, we are unable to agree with the judgment and decree dated 24.6.1999 in A.S.No.715 of 1987 of the learned Single Judge and therefore, the same is set aside and the L.P.A. is allowed and consequently, judgment and decree of the trial Court dated 13.7.1987 in O.S.No.387 of 1984 is confirmed. No costs.
(S.J.J.) (P.D.D.J.)

06.03.2002
Index :Yes/No
Internet:Yes/No
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sd/-
ASSISTANT REGISTRAR

/ TRUE COPY /

SUB ASSISTANT REGISTRAR
To:
The III Additional Subordinate Judge, Coimbatore

S.JAGADEESAN,J.
AND
P.D.DINAKARAN,J

L.P.A.No.227 of 1999

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